IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.281 OF 1997

1. Shri Anant Ramchandra Nimbalkar
since deceased through Lrs
1a) Smt.Vijaya Anant Nimbalkar
1b) Sanjay Anant Nimbalkar
1c) Manohar Anant Nimbalkar
1d) Aparna Anant Nimbalkar ...Appellants
(Orig.Defts)

Versus

1. Tanaji Hanmant Nimbalkar
2. Kalpana Pandurang Kulkarni
3. Mangala Patangrao Mane ... Respondents

WITH

SECOND APPEAL NO. 381 of 1997

1. Shri Anant Ramchandra Nimbalkar
since deceased through Lrs
1a) Smt.Vijaya Anant Nimbalkar
1b) Sanjay Anant Nimbalkar
1c) Manohar Anant Nimbalkar
1d) Aparna Anant Nimbalkar ...Appellants
(Orig.Defts)

Versus

1. Tanaji Hanmant Nimbalkar
2. Kalpana Pandurang Kulkarni
3. Mangala Patangrao Mane ... Respondents
(Nos.2 and 3 stands dismissed
vide order dated 26-8-92)

Shri A.V. Anturkar for Appellant
Shri Bodake for Respondents

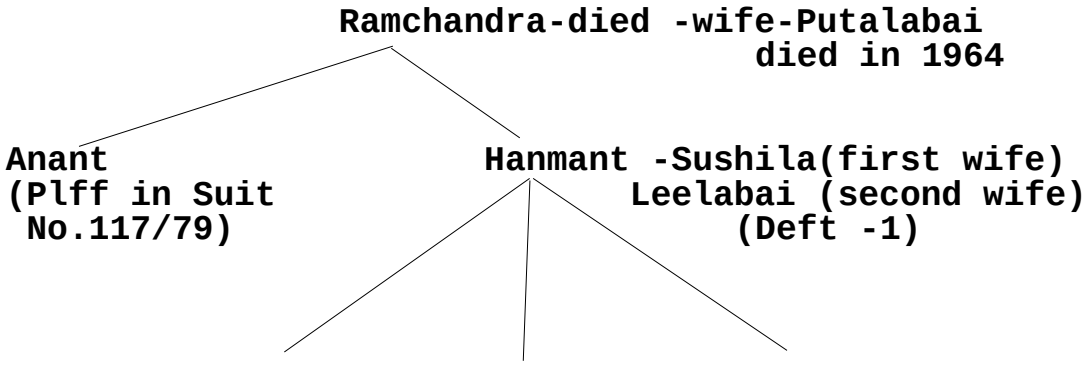
CORAM : S.R. SATHE,J.

DATED : 09th APRIL, 2007

ORAL JUDGEMENT :-

The heirs of late Anant Ramchandra Nimbalkar have filed the above mentioned Second Appeals against the common judgment and order passed by the 2nd Additional District Judge, Satara whereby it was held that the suit property bearing Plot No.5 CTS No.467/1B situated in Primary Teachers Society, Satara is owned by Tanaji Hanmantrao Nimbalkar, plaintiff in Regular Civil Suit No.179 of 1981 and heirs of Anant Ramchandra Nimbalkar have no right, title and interest in the same and that Anant Ramcahndra Nimbalkar had taken forcible possession of rooms out of the said property and as such the heirs of Anant were directed to hand over possession of the suit property to Tanaji Hanmant Nimbalkar.

2. In order to appreciate the facts giving rise to these Second Appeals it would be worthwhile to set out the genealogy showing the relation between the parties to the said proceedings.



Tanaji Deft-2 **Pamdavati Deft-3** **Chadnrabhaga Deft-4**

3. The dispute regarding the suit property is in between the branch of Anant and branch of his brother Hanmant. Admittedly their father Ramchandra was the owner of some open plot situated at Dharwad. Ramchandra died in 1943 leaving behind his wife Putalabai and two sons viz. Hanmant and Anant and one daughter. Hanmant was serving as a primary teacher in the school of Zilla Parishad. After the death of his first wife in 1963 Hanmant performed second marriage with Lilabai. Initially Anant was serving in Public Health Department at Satara. He was having salary of Rs.85/- per month. After two months he left the said job and started serving in State Transport on monthly salary of Rs.1256/-. He left that job in the year 1959 and started serving in Railway. According to Anant out of his salary he had saved Rs.7,000/- and deposited the same in bank in the name of his mother. Out of the said amount and the amount which he had received from Railway after he left the said job, he purchased house No.336, Gurwar Peth, Satara for Rs.2300/-. According to Anant the financial position of his brother

Hanmant was not well. It was in fact difficult for him to maintain his family consisting of wife, one son Tanjai and 2 daughters viz. Padmabai and Chandra. Besides that as Hanmant was not keeping well he was required to spend lot of money for his illness. The primary teachers at Satara had formed a housing society. Anant was not a primary teacher and as such he purchased the suit plot in the said society out of his money in the name of Hanmant. Since 1966 Anant's wife was also serving as a teacher and she was getting salary of about Rs.100/- to Rs.125/- per month. Thus, out of their savings and out of sale proceeds of the house situated at Satara, Anant constructed 7 rooms out of his own money on the suit plot. Thus, the suit property was standing in the name of Hanmant as Benami. However, one room out of the said property was given to Lilabai for her residence. After the death of Hanmant in the year 1971 Anant's sister and Lilabai filed an application for appointing them as guardian of Tanaji, the minor son of late Hanmant. At that time, they represented that suit property is exclusively owned by Tanaji. Hence, Anant filed Regular Civil Suit No.117/1979 against Lilabai and Tanaji for a declaration that the suit property is

exclusively owned by Anant and also claimed possession of one room from Lilabai.

4. Lilabai, defendant no.1 in the said suit filed her written statement at Exh.21 and contended that the suit property was purchased by her husband Hanmant but Anant obtained forcible possession of some portion of the said property. She therefore prayed that Anant's claim regarding one room be dismissed. She also contended that since prior to 24 years there was no joint family of Anant and Hanmant. Both of them were residing separately. Anant had never helped Hanmant and Hanmant was in fact serving till the time of his death. Even at the time of his death Hanmant was having salary of Rs.400/- to 500/- per month. She also denied Anant's case that he had kept money in the name of his mother and contended that Hanmant had in fact kept money in the name of his mother. According to her, initially, Hanmant had purchased two shares in the Primary Teachers' Co operative Society out of his own money and he constructed the house on the plot purchased in the said society. She therefore, contended that Anant had absolutely no right or interest in the said room.

5. Lilabai also contended that taking advantage of the fact that her husband had died and her children were minor Anant obtained forcible possession of some portion of the suit property. Not only that but he also started recovering rent from the tenants residing in the suit property. He often used to give threat to her that he will finish her. According to her Tanaji and Padma were in fact looked after by their paternal aunt Nalini Nanasaheb Mane. She further contended that in Misc. Application which was filed for declaring her as a guardian of the property of minor Anant had in fact admitted that suit property is exclusively owned by Tanaji. She denied the case of Anant that construction carried out on the suit plot is by Anant out of his own income. Hence on all these grounds she prayed for dismissal of the suit No.117/79 filed by Anant.

6. Mrs. Nalini Nanasaheb Mane guardian of minor Tanaji also filed Written Statement at Exh.24 and took similar contentions. She also contended that as suit property is situated in the primary school teachers co op housing society, the suit property

cannot be transferred to a person who is not a member of the society. Anant is not the member of the said society so under such circumstances he is not entitled to get any relief in respect of the suit property. She also contended that said Co operative society is a necessary party to the present suit and as the dispute is touching the business of the society civil court has no jurisdiction to try the suit filed by Anant. She also contended that Anant had in fact filed Misc. Application No.51 of 1973 for declaring him as guardian of Tanaji but thereafter he admitted that property is owned by Tanaji and also withdrew the application filed by him. She therefore contended that the suit filed by Anant be dismissed.

7. During the pendency of the above mentioned suit Nalini Nanasaheb Mane, the guardian of Tanaji H. Nimbalkar filed Regular Civil Suit NO.179 of 1981 in the court of the Civil Court, S.D., Satara for declaration and possession in respect of 4 rooms out of suit property. Therein it was alleged that Tanaji's father Hanmant was a primary teacher and he purchased flat no.5 out of Primary Teacher's Co operative Society and thereafter constructed the

suit building out of his own income. Tanaji's uncle Anant was not at all any way concern with the said property. However, he forcibly took possession of 4 rooms in the year 1974 and out of those 4 rooms he gave 2 rooms to Kalpana Kulkarni and Mangala Mane on rental basis and started recovering the rent. When she had filed application for appointment of guardianship Anant had in fact admitted that the suit property is owned by Tanaji but even thereafter he did not hand over possession of the suit rooms which was obtained by him unauthorisedly and on the contrary filed a false suit bearing Suit NO.117 of 1979. She therefore filed Suit No.179 of 1981 as a guardian of Tanaji for a declaration that Tanaji is the owner of the suit property and that Anant i.e. Defendant no.1 in the said suit should hand over the possession of the suit rooms which are in his possession.

8. Anant, defendant no.1 in the said suit filed his Written Statement at Exh.2 and opposed the suit claim in which he contended that the suit property was in fact purchased by him out of his own income but only in the name of Hanmant as the suit plot was situated in primary teachers co operative housing

society and it was not possible for him to purchase the same as he was not a teacher. Thus, according to him the name of Hanmant for the suit property was Benami. The defendant no.1 Anant also took alternative contention that suit plot was purchased out of joint family property and thereafter he i.e. Anant constructed house on the same out of his own income with the consent of Hanmant. He also contended that after the time he left the job in Railway he started residing in the suit property and at that time Hanmant and his wife Lilabai by their conduct and writing admitted that the suit property is owned by Anant. So, according to him Tanaji is now estopped from alleging that the suit property is exclusively owned by him.

9. Anant also contended that the suit property is the joint family property and he is having ½ share in the same but as he has spent Rs.25,000/- out of his own income for construction of the suit house, unless the heirs of Hanmant viz. Tanaji and others do not pay Rs.11,520/- towards the contribution of the construction expenses they are not entitled for ownership in respect of half share of the suit property. Hence on all these grounds

Anant, defendant no.1 in Regular Civil Suit no.179 of 1981 prayed for dismissal of the suit. During the pendency of the above mentioned two suits Anant R. Nimbalkar amended his plaint thrice, firstly on 25-7-1985 and then on 30-6-1986 and alleged that till the year 1973 he and defendant were residing together in the suit property but thereafter due to disputes between them Lilabai started residing separately in one room situated in the suit house. He also alternatively prayed that the suit property be declared as the joint family property of deceased Hanmant and Anant and that Anant is having half share in the suit property.

10. The defendant no.2 filed additional written statement Exh.46 in view of the amended plaint and denied all the allegations of the plaintiff Anant and prayed for dismissal of the suit.

11. In view of the above mentioned pleadings the learned trial Judge framed issues at Exh.26 and 46 in Suit NO.117 of 1971. He also framed issues at Exh.30 in Regular Civil Suit No.179 of 1981. Parties to the above mentioned suit led common evidence. In order to prove claim in Suit No.117 of 1979 and the

contentions in Regular Civil suit NO.179 of 1981 Anant examined himself at Exh.76 and six other witnesses. As against this, Lilabai, defendant no.1 in Regular Civil suit NO.117 of 1979 and plaintiff in Regular Civil Suit NO.179 of 1981 examined herself at Exh.139 and one witness Nalini Mane at Exh.141. Both the parties produced several documents. After considering the entire evidence on record the learned trial Judge came to the conclusion that the plaintiffs in both the suits have failed to prove that the suit property is exclusively owned by them. But on the contrary held that as per the alternative pleadings taken by Anant after amending the suit he has proved that the suit property is the joint family property of Anant and late Hanmant and he is having half share in the same. He also held that Lilabai plaintiff in Regular Civil Suit No.179 of 1981 has failed to prove that Anant has taken forcible possession of four rooms out of the suit house. He, therefore, dismissed Regular Civil Suit NO.117 of 1979 so far as declaration of Anant's exclusive title is concerned and declared that the suit property is joint family property of plaintiff Anant with Lilabai and her son Tanaji defendant no.1 and plaintiff is having half

share in the suit property and dismissed Regular Civil Suit NO.179 of 1981 filed by Lilabai as guardian of Tanaji Hanmant Nimbalkar.

12. Being aggrieved by the judgment and order passed in Regular Civil Suit No.179 of 1981 the original plaintiff in the said suit viz.Tanaji H. Nimbalkar filed Regular Civil Appeal No.704 of 1986 while being aggrieved by the order passed in Regular Civil suit No.117 of 1979 the original defendant in the said suit i.e. Lilabai and Tanaji filed Regular Civil Appeal No.706 of 1986. Both the said appeals were heard together by the learned 2nd Additional District Judge, Satara. After hearing arguments of both the learned advocates the learned Appellate Judge came to the conclusion that Anant Nimbalkar has failed to prove his claim in Regular Civil Suit NO.117 of 1979 that he is the real owner of the suit property and it is standing in the name of Hanmant as Benami. At the same time, he also held that the suit property is not the joint family property as held by the learned trial Judge and the suit property is in fact exclusively owned by Tanaji as alleged in Regular Civil Suit No.179 of 1981. He also held that as alleged by Tanaji in Regular Civil

Suit NO.179 of 1981 the defendant Anant has taken forcible possession of 4 rooms out of the suit house. He, therefore, allowed both the above mentioned civil appeals and dismissed the Cross objections. Consequently, he dismissed Regular Civil Suit No.117 of 1979 and decreed Regular Civil Suit No.179 of 1981 and directed the defendants in the said suit i.e. Anant Ramchandra Nimbalkar's heirs to hand over vacant possession of the suit premises to Tanaji.

13. The above mentioned order passed in the common judgment by the First Appellate Court is challenged by the heirs of Anant Ramchandra Nimbalkar in the present two Second Appeals. Second Appeal No.281 of 1997 is in respect of the order passed by the First Appellate Court in Regular Civil Appeal No.704 of 1986 while Second Appeal No.381 of 1997 is against the judgment and order passed by the First Appellate court in Regular Civil Appeal No.708 of 1988.

14. From the perusal of the record it appears that while admitting both the appeals this Court (Coram:A.Y.Sakhare,J) has passed the following

order:

"Admit. Ground no.1A involves substantial question of law."

The said ground is as under :

"Whether in this particular case the provisions of Benami Transaction (Prohibition) Act, 1988 are applicable or not?

15. As parties to the present two appeals are same and subject matter is also same and both the appeals are arising out of common judgment, these second appeals are being disposed of by this common judgment.

16. Shri Anturkar, learned Advocate for the Appellant has urged three points before me. Firstly, he submitted that first appellate court has not properly appreciated the evidence on record and has in fact not applied its mind to the reasoning given by the learned trial Judge and without considering the same has simply brushed aside the same and held that the suit property is not joint family property of the plaintiff and defendant. Secondly, he canvassed before me that the provisions of Benami Transaction (Prohibition) Act, 1988 are applicable

to the facts of the present case and the original plaintiff and then his heirs had elected the alternative plea namely the suit property is the joint family property of plaintiff and defendants. He, therefore, submitted that it be held accordingly and the decree for possession passed against the present Appellants by the first appellate court be set aside. Lastly, he submitted that the learned first appellate court has taken into consideration the provisions of Section 281 of the Income tax Act while discarding the plea of Benami transaction taken by the Appellant Anant, but the defendants had in fact not taken any such contention in the written statement and as such the defendants were in fact not entitled to take such plea for the first time at the appellate stage. He, therefore, submitted that non application of mind on the part of the first appellate court to the reasoning given by the learned trial Judge has itself given rise to the substantial question of law and it is therefore necessary to scrutinize the evidence on record. He therefore submitted that both the appeals be allowed. The order passed by the first appellate court be set aside and it be held that the suit property is a joint family property in

which plaintiff and defendants are having half share each.

17. As against this, Shri Bodke, learned advocate for the Respondents submitted that at the time of admission of the Second Appeal only one substantial question of law has been formulated and it is “whether the provisions of Benami Transaction (Prohibition) Act 1988 are applicable to the instant case.” However, as the Appellants have in fact given up their case regarding Benami transaction and now restricted their claim only on the ground that the suit property is joint family property of the plaintiff and defendants there is in fact no substantial question of law involved in the present appeals and as such the same be dismissed. Secondly, he submitted that the first appellate court has taken into consideration the entire evidence on record and has rightly held that the original plaintiff has failed to prove that the property was purchased Benami in the name of Hanmanta. Not only that but the first appellate court has also observed that there is no sufficient evidence to hold that the suit property is joint family property. He, therefore, submitted that the order

passed by the First Appellate court is legal and correct and as such both the appeals be dismissed.

18. The genealogy set out in earlier para of this judgment is not in dispute. It is also an admitted fact that initially the Appellant had claimed the ownership of the suit property bearing plot no.5 CTS NO.467/1B Sadar Bazar, Satara by alleging that the said property was purchased by Anant in the name of his elder brother Hanmant Nimbalkar. Not only that, initially, it was also claimed by Anant that the entire structure standing on the said plot, consisting of 7 rooms is constructed by him. However, curiously enough we find that at the fag end of the suit i.e. after the time the evidence was adduced by the parties the original plaintiff Anant sought amendment in the plaint and took the plea that the said property is the joint family property of he and his brother Hanmant and he is having half share in the same. Shri Anturkar, learned advocate for the Appellant submitted that plaintiff was entitled to make alternative plea and ultimately plaintiff has elected the case of joint ownership over the suit property. In view of this, there is in fact no

necessity for this court to consider as to whether there is any substance in the initial case made out by the plaintiff viz. that the suit property is purchased by Anant out of his funds but only in the name of his brother Hanmant and that Hanmant was Benamidar. Naturally, there is no necessity to consider the issue as to whether the provisions of Benami Transactions (Prohibition) Act 1988 are applicable to the present case. In view of this the substantial question of law on which the present appeal was admitted goes away. As a result of this, it is not even necessary to take into consideration the various judgments cited before me by the learned Advocate for the appellant on the point of benami transaction.

19. In order to show that the present transaction is not hit by the provisions of Section 4 of the Benami Transaction (Protection) Act 1988 the learned Advocate for the Appellant has placed reliance on a case **R. Raj Gopal Reddy and others V/s Padmini Chandrashekhar 1985(2) SCC 630** as well as **G. Mahalingappa V/s G.M.Savita (2005) 6 SCC 441.** In both these authorities it has been held that Section 4(1) of above mentioned Act is not retrospective in

operation and it does not apply to pending suits, filed and entertained prior to coming into force of Section 4. Admittedly, the suit property is purchased some time in the year 1960 or thereabout while plaintiff filed the suit in 1979 i.e. Prior to coming into force the above mentioned Act. So, under such circumstances it cannot be said that the transaction in question is hit by Section 4(i) of the said Act. Of course, it must also be noted that both the courts below have taken into consideration all the facts and circumstances of the case and have rightly held that the Appellant has failed to prove that he purchased the suit flat out of his own funds but in the name of his brother Hanmant. So, it is not necessary to dwell on this point any more.

20. Shri Anturkar, learned Advocate for the Appellant submitted that substantial question of law which is required to be decided in the present appeals is whether the first appellant court has properly considered the entire evidence on record and whether the said court is justified in setting aside the finding recorded by the trial Court that the suit property is the joint family property of Anant and his brother. Shri Bodke, learned Advocate

for the Respondents strenuously argued before me that once the substantial question of law on which the appeal was admitted is no more in existence the appellant cannot argue on any other point and submit that there is some other substantial question of law involved in the matter. However, there are various authoritative pronouncements in which it is held that though a particular question is not framed as substantial question of law at the time of admission of appeal, still, the appellant can point out that besides the question formulated at the time of admission of appeal, some other important question is involved in the matter. In order to substantiate this proposition, the learned Advocate for the appellant has placed reliance on a case **Santosh Hajari V/s Pursohottam Tiwari (2001) 3 SCC 179** wherein the Apex Court has held that High Court is not bound to confine itself and deal with only question initially framed by it, High Court may hear the appeal on any other such question so long as it is satisfied that the case involves such question and records its reasoning for such satisfaction. So, taking into consideration the position of law and the facts of this case I think that it is necessary to decide these appeals on the question as to

whether the appellants have proved that the suit property is a joint family property as alleged by the appellant

21. At the outset it may be mentioned that the First Appellate Court after considering the entire evidence on record from all aspects has recorded the finding that plaintiff Anant has failed to prove that the suit property is the joint family property of Anant and his brother Hanmant. This is certainly a finding of fact and the same cannot be challenged in the Second Appeal unless it is shown that the said finding is recorded without considering the particular evidence or the appreciation of evidence is perverse.

22. From the perusal of the record it appears that in order to prove that the suit property is the joint family property property, in suit No.117 of 1979 Plaintiff Anant has examined himself at Exh.76. He has also examined some other witnesses in order to show that the construction has been carried out on the said plot under his supervision and he spent amount for the said construction. Anant has placed on record some receipts issued by messan, carpenter

etc. Some of them have also stated that these receipts are executed by them and they received money from Anant. However,merely because they have stated accordingly one cannot jump to the conclusion that evidence of Anant in this behalf is true. The said evidence has to be tested on the basis of all other relevant facts, circumstances, the evidence on record and the conduct of the parties.

23. The first and foremost thing which has to be noted is that the stand of Anant in respect of the said property is not consistent. Initially he had come out with a case that the suit property was purchased by him out of his own income but in the name of his brother Hanmant as the property was from the Teachers Co Op Society and Hanmant was serving as a teacher. However, after a long time i.e. When the entire evidence was recorded and the mater was argued the original plaintiff Anant amended the plaint and took the plea that the suit property is the joint family property and he and his brother Hanmant are having equal share in the same. Thus, admittedly the theory with regard to benami transaction was given up by the plaintiff Anant. So, this circumstance itself first creates some doubt

about the version of Anant.

24. Though Anant has alleged that initial amount with regard to the purchase of share i.e. Rs.50/- was paid by him, there is no positive and convincing evidence in that behalf. Even if we assume that when the share in the name of Hanmant was purchased he had paid said amount, it appears that the said amount was even repaid to him. So, merely because some amounts were paid by him to Hanmant for making payment it cannot be said that the said payment was made by Hanmant for and on behalf of Anant or that with understanding that the property that will be purchased will be of joint family. It is true that Anant and Hanmant were real brothers of each other and residing together, however, admittedly since the year 1953 or thereabout Hanmant was serving as a primary teacher and he served till his death. It is also the case of the plaintiff Anant that initially he was serving in a Public Health Department, then in Zilla Local Board and then Public Health Department. He also served in State Transport Corporation in the year 1952 and then started tobacco business in the year 1963. It must be noted that though according to plaintiff he was serving in

various Government departments he has not produced any documentary evidence to show as to what was his salary, when he was serving in the said departments. There is also no sufficient evidence to show as to what sort of tobacco business he was doing and what was his business income. Merely because Anant and his brother Hanmant were residing together or jointly, one cannot jump to the conclusion that the said joint family had joint family property. Though it is stated by the plaintiff that they were having ancestral property at Dharwad and it was sold there is nothing on record to show that out of the said sale proceeds the amount was utilised for the purchase of the suit property. So, the evidence of the plaintiff to show that the suit property was purchased out of his own income or out of joint family income is certainly not sufficient to jump to the conclusion that the plaintiff has proved that the suit property is the joint family property.

25. From the record it does appear that the suit property was in fact initially purchased in the name of Sushila i.e. First wife of Hanmant and thereafter it was recorded in the name of Hanmant and after Hanmant's death the name of his minor son Tanaji was

entered to the suit property. Thus, admittedly the suit property is all along standing in the name of Hanmant or his son. So, also the Municipal record shows that the property is not standing in the name of plaintiff Anant but in the name of Hanmant and his son. The permission granted by municipality for carrying out the construction on the said property is also in the name of Tanaji, obviously because the property was standing in his name. There are some very important circumstances which clearly go to show that the version of the plaintiff is not true and correct.

26. It is an admitted fact that after the death of Hanmant the plaintiff Anant filed Misc. application No.71 of 1973 in the District court, Satara and prayed that he be appointed as a guardian of the minor Tanaji. He had prayed for appointing him as a guardian not only in respect of person of minor but also for the property of the minor. In that application he had shown the present property as the minor's property. In this application he has specifically mentioned “this is the only property belonging to minor”. If really the property would have been owned by the joint family and if Hanmant

had given him writing Exh.117 as alleged by the plaintiff Anant then certainly Anant would not have filed such application and would not have stated in that application that property in question is the minor's property. What is more to be noted is that subsequently Anant filed purshis on 16-7-1974 and submitted to the Court that he wrongly mentioned in the application that it is minor's property, but the said property is in fact owned by him and therefore sought permission to withdraw the said application. Minor's mother Lilabai and others strongly objected to the said purshis and at that time they specifically contended that Anant is not at all concerned with the said property but on the contrary he has taken forcible possession and he should not be appointed as guardian. It must be noted that in this application when above mentioned purshis was submitted the Assistant Judge, Satara passed the following order:

> “Heard the counsel for the parties. The petitioner has asserted in par 3 of the petition that he is in possession of minors property and a defacto guardian of minor also. Mr. Wagh Pleader admitted that petitioner is still in possession of the part

of the property. However minor has left the petitioner and hence the petitioner does not want to proceed with the petition. The interests of the petitioner do not seen to be in minor's interests. Hence I allow the petitioner to be dismissed for want of prosecution but the petitioner shall remain accountable to minor for his possession of the minor's property and its income and shall be liable to return the property and refund all monetary gains the petitioner has derived and is deriving and is likely to derive in future to the minor. Petitioner to bear the costs of opponents and his own."

It is an admitted fact that Anant did not challenge the above mentioned order.

27. So, this is a very important piece of evidence which negatives the case of plaintiff Anant that the suit property is the joint family property of Anant and Hanmant. It has come on record that subsequently in the year 1974 Nalini @ Saraswatibai Mane, sister of Hanmant filed Civil Application NO.68/74 and prayed that she be appointed as guardian of minor Tanaj's person and property. The

said application was supported by Lilabai, step mother of Tanaji but it was opposed by the plaintiff Anant. However, the Court did not accept his objection and appointed Nalini @ Sarawatibai as guardian of Tanaji. Admittedly, Anant did not challenge this order also. If really the said property would have been joint family property and not exclusively owned by minor Tanaji then certainly Anant would have challenged this order but that has not happened. So, this conduct of Anant speaks volumes and this itself shows that writing alleged to have been executed by Hanmant in his favour on 13-7-1970 is bogus and cannot be relied upon. Even if we see the said writing Exh.117 it clearly shows that after the contents of the said documents are over the revenue stamp is affixed much below the said writing and it also gives the impression that only signature might have been obtained on stamp paper and contents were written subsequently. What is more to be noted is that if really Anant had an intention to obtain some writing from his brother Hanmant whereby Hanmant was to admit that Anant is having half share in the suit property, then certainly he would not have obtained such writing on simple paper but would have obtained the same on

stamp paper and before some responsible persons. On the contrary, it is stated by Anant that this writing has been obtained by him when one Vinod J. Naik, a mason had come to him for work. The said mason has also supported the version of plaintiff Anant, but it is very clear that as he was acquainted with Anant for a long time he must have deposed accordingly so as to oblige Anant. If really the signature would have been obtained by Anant from Hanmant then the plaintiff would have also taken some steps to send the said document to the hand writing expert but that has also not happened. Even if we assume that the signature on the said revenue stamp is of Hanmant still then I have pointed out above that the contents of the said document create grave doubt about the genuineness of the said document. If such important document would have been in the hands of Anant then certainly he would not have filed M.A.no.71 of 1973 stating that the suit property is the property of minor. Besides this he would have challenged the orders passed against him in the above two Misc. applications viz. M.A.No.71 of 1973 and 68 of 1974. But has he has kept mum. I have no hesitation to hold that the conduct of the plaintiff Anant certainly establishes that he was

aware of the fact that the suit property was not joint family property but it was property of Tanaji and that is why he kept mum.

28. A feeble attempt has been made by the plaintiff Anant to show that even Lilabai had admitted that Anant has half share in the suit property and that she had executed writing to that effect. In order to establish the same plaintiff has produced Exh.119 i.e.one writing. However the execution of the same is denied by Lilabai. What is pertinent to be noted is that the stamp paper of this document is not purchased by Lilabai but by one Shinde and document shows that Lilabai has put her thumb impression on the same. She has of course, denied the same. Even then the plaintiff did not take any steps for sending this document to hand writing and finger print expert. It is wroth to note that the plaintiff himself has produced one other document i.e. Statement recorded by Circle Officer, Satara and it shows that Lilabai has put her signature on the same. So, this in fact shows that Lilabai used to sign the document and she was not putting her thumb impression. So, under such circumstances reliance cannot be placed on the

writing Exh.119 produced by the plaintiff.

29. It has come on record that Hanmant had entered the name of Tanaji as his nominee. If really the property would have been purchased out of joint family income and the plaintiff Anant was in fact claiming any right in the said property then he would have at least insisted that his name be shown as nominee but that has also not happened. Thus, we find that there are various circumstances which clearly go to show that the plaintiff has failed to prove that the suit property was the joint family property of plaintiff Anant and his brother Hanmant.

30. After careful reading of the judgment of the First Appellate Court, I have no hesitation to hold that the learned Additional District Judge, Satara has considered the entire evidence on record in its proper perspective and rightly held that the plaintiff Anant has failed to prove that the suit property is the joint family property. There is absolutely nothing on record to show that the said finding of the learned Additional District Judge, Satara is incorrect.

31. In this view of the matter, there is no substance in both these appeals. Hence I pass the following order :

i. Second Appeal No.281 of 1997 is dismissed with costs.

ii. Second Appeal No.381 of 1997 is dismissed with costs.

iii. The order passed by the Second Additional District Judge Satara in Regular Civil Appeal No. 704 of 1986 is confirmed and the defendants in regular civil suit No.179 of 1981 are directed to hand over vacant possession of the suit premises to Tanaji Hanmant Nimbalkar within 3 months from today.

(S.R. SATHE,J.)